

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

126 GANNON PLAZA, LLC  
Plaintiff,

v.

SENECA INSURANCE COMPANY  
Defendant.

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Civil Action No. \_\_\_\_\_

**DEFENDANT SENECA INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

TO THE HONORABLE COURT:

Pursuant to 28 U.S.C. §§1441 and 1446, Defendant Seneca Insurance Company ("Seneca") files this Notice of Removal on the basis of diversity of citizenship and jurisdictional amount, and respectfully shows the Court the following:

**REMOVAL IS TIMELY**

1. Seneca is a Defendant in Cause No. DC-16-00159, filed in the 14th Judicial District Court of Dallas County, Texas, styled *126 Gannon Plaza, LLC v. Seneca Insurance Company*. Plaintiff commenced this civil action against Seneca in the state court on or about January 7, 2016. Seneca was first served with Plaintiff's Original Petition (the "Petition") on January 13, 2016.

2. Therefore, service of process in this cause was served on Seneca not more than thirty (30) days before the filing of this notice, and this Notice of Removal is being filed within one year of the date suit was first filed in state court.

**BASIS FOR REMOVAL**

3. Removal is proper based upon diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

**A. There is Complete Diversity**

4. In its Original Petition, Plaintiff 126 Gannon Plaza, LLC (“Gannon Plaza”) acknowledges it is a resident of the State of Texas. (Pl.’s Orig. Pet. at ¶ 3.)

5. Both at the time the lawsuit was originally filed, and at the time of removal, Defendant Seneca is a corporation incorporated and existing under the laws of New York, keeping its principal place of business in New York.

**B. The Amount in Controversy Exceeds \$75,000.00**

6. This is a civil action in which the amount in controversy exceeds the jurisdictional limits of \$75,000.00. In determining the amount in controversy, the Court may consider, “penalties, statutory damages, and punitive damages.” *St Paul Reinsurance Co, Ltd v Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v State Farm Lloyds*, 1999 WL 151667, at \*2 - 3 (N.D. Tex. 1999)(finding sufficient amount in controversy in plaintiff's case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish). Plaintiff alleges that Seneca is liable under common law claims for breach of contract and violations of §542 of the Texas Insurance Code and seeks to recover actual damages, consequential damages, prejudgment interest, additional statutory damages, post-judgment interest, and reasonable and necessary attorneys’ fees. Plaintiff’s Original Petition also indicates that Plaintiff seeks in excess of \$100,000. Plaintiff also issued a Notice of Representation and Demand Letter the day after it filed suit. The letter indicates a demand of \$3,027,728. Attached as Exhibit A. Taking these factors into account, the amount in controversy clearly exceeds \$75,000.

7. Accordingly, by virtue of diversity of citizenship the United States district courts have original jurisdiction.

**STATE COURT DOCUMENTS BEING FILED**

8. Pursuant to 28 U.S.C. §1446(a), attached hereto as Exhibit “B” is the Index of Matters Being Filed that clearly identifies each document and indicates the date the document was filed in state court. Attached as Exhibit “C” is a copy of the docket sheet, and all documents filed in the state court action are attached as Exhibit “C-1” through Exhibit “C-9” as identified on the Index of State Court Documents.

**PRAYER**

**WHEREFORE**, based upon 28 U.S.C. §§1441 and 1446, Seneca respectfully requests that this action be removed to the United States District Court for the Northern District of Texas, Dallas Division, and that it be granted such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Christopher H. Avery

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**ATTORNEYS FOR  
SENECA INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2016, a true and correct copy of the foregoing instrument was served pursuant to the Federal Rules of Civil Procedure on the following counsel of record:

Mr. Patrick McGinnis  
Mr. Phillip Sanov  
Merlin Law Group  
Three Riverway, Suite 1375  
Houston, Texas 77056

/s/ Christopher H. Avery

Christopher H. Avery